IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS
Judges Jessica R. Cooper and Mark J. Cavanagh (Majority)
and Judge Brian K. Zahra (Dissenting)

CASCO TOWNSHIP, COLUMBUS TOWNSHIP, PATRICIA ISELER and JAMES P. HOLK, Plaintiffs/Counter-Defendants-Appellants,	Supreme Court Case No. 126120
v	
SECRETARY OF STATE, DIRECTOR OF THE BUREAU OF ELECTIONS, and CITY OF RICHMOND, Defendants-Appellees,	Court of Appeals Case No. 244101
-and-	
WALTER K. WINKLE and PATRICIA A. WINKLE, Intervening Defendants/ Counter-Plaintiffs-Appellees.	Ingham County Circuit Court Case No. 02-991-CZ

IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS
Judges Richard Allen Griffin, Patrick M. Meter, and Bill Schuette

FILLMORE TOWNSHIP, SHIRLEY GREVING, ANDREA STAM, LARRY SYBESMA, JODY TENBRINK, and JAMES RIETVELD, Plaintiffs-Appellants,	Supreme Court Case No. 126369
v	
SECRETARY OF STATE, DIRECTOR OF THE BUREAU OF ELECTIONS, Defendants-Appellees,	Court of Appeals Case No. 245640
and	
CITY OF HOLLAND, Intervenor-Appellee.	

APPELLANTS' CONSOLIDATED REPLY BRIEF

*** * * Oral Argument Requested * * ***

William K. Fahey (P27745)
Stephen J. Rhodes (P40112)
Eric E. Doster (P41782)
Ronald D. Richards Jr. (P61007)
FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for Plaintiffs/Appellants
313 S. Washington Square
Lansing, MI 48933
(517) 371-8100

James V. Dubay (P12977)
Co-counsel for Plaintiffs/Appellants
in Case No. 126120
68650 S. Main Street
Richmond, MI 48062
(586) 727-2455

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases:

Statutes:

Other Authorities:

INTRODUCTION

Plaintiffs/Appellants ("Plaintiffs") filed their briefs on appeal in Casco Twp v Secretary of State (Docket No. 126120) and Fillmore Twp v Secretary of State (Docket No. 126369), focusing on the two issues that this Court directed the parties to brief.[1] In response, (1) Terri Lynn Land and Christopher M. Thomas (collectively, "Secretary of State") filed a consolidated brief in both cases; (2) Appellee City of Richmond ("Richmond") filed a brief in Casco Twp; (3) Intervenors-Appellees Walter K. Winkle and Patricia A. Winkle ("Winkle") filed a brief in Casco Twp; (4) Intervenor-Appellee City of Holland ("Holland") filed a brief in Fillmore Twp; and (5) Amicus Curiae Michigan Municipal League ("MML") filed a brief in Casco Twp.[2]

Appellees' voluminous briefs (collectively 168 pages) consist largely of hyperbole, strawmen, and other devices apparently designed to convince this Court to rewrite the Legislature's plain statutory language, or to abandon the questions that the Court asked the parties to answer.[3] Appellees claim that the HRCA is "ambiguous" on whether a single petition and election may detach territory to more than one township (Secretary of State's

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[1]The Court ordered that these cases be argued and submitted to the Court together, and directed the parties to brief the issues of (1) whether a single detachment petition and vote thereon, pursuant to the terms of the Home Rule Cities Act ("HRCA"), MCL 117.1 et seq may encompass territory to be detached to more than one township, and (2) whether a writ of mandamus should issue to compel the Secretary of State to issue a notice directing an election on the change of boundaries sought by plaintiffs. October 8, 2004 Order granting leave to appeal in Casco Twp, 471 Mich 890; 687 NW2d 597 (2004).

[2]For simplicity, "Appellees" refers to all Appellees in both cases, plus the MML, unless otherwise indicated.

[3]The City of Holland even challenges this Court's jurisdiction (Holland brief, pp. 2-5) despite the Court of Appeals' rejection of essentially the same arguments and this Court's grant of leave to appeal.

brief, pp. 20-26). They vaguely (but repeatedly) maintain that the HRCA is "equally susceptible to more than a single meaning." (Id.). Despite the combined length of their presentations, however, none of the Appellees cite any statutory language in the HRCA that would prohibit a single petition and election to detach territory to more than one township. Thus, their vague arguments of "ambiguity" and "more than a single meaning" are meritless attempts to rewrite the HRCA.

Plaintiffs now file this consolidated reply brief addressing Appellees' overlapping arguments. Plaintiffs' initial briefs thoroughly discussed the questions presented by the Court, and largely anticipated Appellees' relevant responses. Plaintiffs' avoidance of repetition and corresponding failure to specifically address any of Appellees' positions should not be deemed to constitute an acceptance of any position. Plaintiffs will attempt to respond to Appellees collectively, in a manner that refocuses Appellees' various arguments into a meaningful analysis.

ARGUMENT

I. THE HRCA'S PLAIN AND UNAMBIGUOUS LANGUAGE PERMITS A SINGLE PETITION AND ELECTION TO DETACH TERRITORY TO MORE THAN ONE TOWNSHIP.

A. The HRCA Unambiguously Allows a Single Petition to Detach Territory to More than One Township.

Appellees contend that the HRCA is ambiguous because MCL 117.11 uses the singular, "township," rather than the plural, "townships." According to Appellees, this somehow "suggests that the Legislature intended to allow the detachment of territory to only one township." (Secretary of State brief, p. 22). This argument obviously ignores that

the Legislature repeatedly preceded the word "township" with the word "each,"[4] throughout the relevant sections of the HRCA. For example, MCL 117.11 states that the Secretary of State must transmit a certified copy of a petition that conforms to the HRCA to "the clerk of each . . . township to be affected by the carrying out of the purposes of such petition." (Emphasis added). The combination of "each" and "township" plainly refers to multiple townships.[5] Even Appellees concede that "every word of a statute should be read in such a way as to be given meaning, and a court should avoid a construction that would render any part of the statute surplusage or nugatory." (Secretary of State brief, p. 9).

Appellees erroneously downplay the meaning of the word "each," which precedes the word "township" seven times in MCL 117.6, MCL 117.9(1) and MCL 117.11. They claim that, since every detachment involves at least two municipalities, the Legislature's use of the word "each" in those sections does not support the conclusion that the HRCA allows the use of a single petition to encompass territory to be detached in more than one township. (Richmond brief, p. 10; Secretary of State brief, p. 23). Appellees cite no language in the HRCA (and there is none) that prohibits or restricts a petition from detaching territory to more than one township. Instead, as Plaintiffs have previously demonstrated, the Legislature's repeated use of the word "each," coupled with the other HRCA language, demonstrate an intent to allow that type of petition. MCL 117.6; MCL 117.9; MCL 117.11.

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[4]The plain meaning of the word "each" refers to "one of two or more . . ." American Heritage Dictionary (2d Coll Ed), p. 434 (1985).

[5]Appellees' suggestion that the Legislature should have used the plural form of the word ("townships") throughout MCL 117.11 is also wrong because the resulting language ("each . . . townships" [sic]) would have been solecistic and nonsensical.

Appellees also claim that the HRCA could be interpreted to bar use of a single petition to detach territory to more than one township by virtue of the "qualified elector" requirement in MCL 117.6 and MCL 117.11. Appellees' position is erroneously premised on splitting the single question stated in each Petition into separate questions, such that some Petition signers would not be "qualified electors" with respect to the theoretical "questions" that Appellees propose to carve off from the single question that each Petition actually stated.

The HRCA requires that detachment petitions be signed by "qualified electors who are freeholders residing within the cities . . . or townships to be affected thereby . . . ." MCL 117.6; MCL 117.11. The Petitions in each case contain a single detachment question. See Walsh v Hare, 355 Mich 570, 573; 95 NW2d 511 (1959). Each Petition is properly signed by residents of the city and the townships that will be affected by the question set forth in the Petition. There is no basis in the HRCA to split the actual question stated in each Petition into separate, hypothetical questions. Walsh, supra, 355 Mich at 573 (where an annexation ballot question was "whether all of the parcels . . . should be annexed" from two townships to one city, the Court rejected an argument to dissect a "package" detachment proposition, noting that the proposal "was indivisible." (emphasis in original)).

The Petitions each contain a single, undivided "package" detachment question of "whether all of the parcels should be detached," just like the single "package proposal" in Walsh, supra, 355 Mich at 573, and Cook v Bd of County Canvassers of Kent County, 190 Mich 149; 155 NW 1033 (1916).[6] There is no basis in the HRCA to force the dissection of

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[6]For the Casco Twp Petition, the single question is whether to detach "certain territory from the City of Richmond to Casco Township and Columbus Township (whichever Township each portion of the detached territory was originally taken from) to be submitted

the question stated in either of these Petitions into separate detachment questions.[7]

B. Appellees' Contention that the HRCA Bars the Use of a Single Petition to Detach Territory to Multiple Townships Defies the HRCA's Unambiguous Language.

Appellees alternatively argue that, if the HRCA is deemed unambiguous, it should be construed to prohibit the use of a single petition to detach territory to more than one township.

1. Appellees' Focus on the Singular Word "Change" Is Flawed.

Appellees argue that the Legislature's use of the word "change" in the singular, in the phrase "proposed change" in MCL 117.6 and MCL 117.10, shows that a petition may only encompass territory to be detached to one township. (Winkle brief, pp. 6-7). MCL 117.6 provides:

> "Cities may be incorporated or territory detached therefrom or added thereto, or consolidation made . . . by proceedings originating by petition therefore signed by qualified electors of the cities, villages, or **townships** to be affected thereby, . . . and not less than 10 of the signatures to such petition shall be obtained from **each** city, village or **township** to be affected by the proposed change: . . ." [Emphasis added.]

Appellees' argument ignores the express reference in MCL 117.6 to "the . . . townships" as among the entities that may be affected by detachment proceedings and to

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at an election to the qualified electors of the City of Richmond, Casco Township, and Columbus Township." (Casco Twp, Appendix 15a). The Fillmore Twp Petition likewise contains a single, undivided "package" detachment question. (Fillmore Twp Appendix 6a).

[7]If another group of petitioners had chosen to include only one city and one township in their detachment proposal, that also would have been permitted by the HRCA. Merely because the permissive HRCA language would have allowed that other alternative, does not mean that the multi-township petitions chosen by Petitioners in these cases are prohibited. The opportunity for different alternatives under the HRCA does not constitute a prohibition of any alternative in the absence of language actually prohibiting something.

"each . . . township" as among the entities that may be affected by a detachment petition. MCL 117.6.[8] If a "proposed change" could only affect one township, the Legislature would not have used the plural form of the word "townships," or the word "each" in MCL 117.6. There is nothing inherent in the word "change" that limits its use to situations where only one actor and only one object are intended.[9]

Appellees also ignore that the Legislature repeatedly used the word "change" in combination with the plural word "boundaries":

> "Said petition [identified in MCL 117.6] shall be addressed to the board of supervisors of the county in which the territory to be affected by such proposed . . . **change of boundaries** is located, and . . . said board of supervisors shall . . . provide that the question of making the proposed . . . **change of boundaries**, shall be submitted to the qualified electors of the district to be affected . . ." [MCL 117.8 (emphasis added).]
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> ". . . The district to be affected by every such proposed . . . **change of boundaries** shall be deemed to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed." [MCL 117.9 (emphasis added).]
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[8]The Winkles inconsistently assert that the words "each city, village or township" as used in MCL 117.6 have the following meanings: (1) "when read in the context of annexation, the words 'each city, village or township' mean one city and one or more villages or townships"; and (2) "when read in the context of detachment, the words 'each city, village or township' mean one city and one township." (Winkle brief, pp. 9-10). The Winkles fail to provide any justification in the plain language of the HRCA for permitting annexations to include multiple townships, yet limiting detachments to one township.

[9]"Change" simply means "to cause to be different; alter . . ." American Heritage Dictionary (2d Coll Ed), p. 258 (1985).

> ". . . The secretary of state shall examine such petition . . . , and if he shall find that the same conforms to the provisions of this act, he shall so certify, and transmit a . . . notice directing that at the next general election . . . the question of making the incorporation, consolidation, or **change of boundaries** petitioned for shall be submitted to the electors of the district to be affected . . . The several city . . . and township clerks . . . shall give notice of the election to be held on the question of making the proposed . . . **change of boundaries** . . . ." [MCL 117.11 (emphasis added).]

The Legislature's repeated use of the phrase "change of boundaries" in the HRCA plainly demonstrates that a single detachment petition may propose a "change" of multiple "boundaries." Thus, the HRCA clearly allows the use of a single petition to "change" the "boundaries" between a city and more than one township, provided that each of those multiple townships are affected by the "change of boundaries" proposed by the petition. MCL 117.6; see also MCL 117.13 (similarly referring to "change of boundaries").[10]

2. Appellees' Reliance on MCL 8.3b is Misplaced.

Plaintiffs previously explained that the Legislature's use of the words "petition" and "election," in the singular, supports the conclusion that one petition and one election may detach territory to more than one township. Appellees respond that the words "petition" and "election" in the HRCA actually mean "petitions" and "elections" (plural, not singular), relying on MCL 8.3b. They then claim that the Legislature's "use" of the rewritten words "petitions" and "elections" in the HRCA shows that, if one seeks to detach territory to more than one township, the HRCA requires multiple "petitions" and the holding of multiple "elections." (Secretary of State brief, p. 26 & n.76; MML brief, pp. 3-4).

Appellees' reliance on MCL 8.3b is misplaced because it is well settled that MCL

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[10]Each Petition's proposal to change multiple boundaries presents a single, indivisible detachment question. Walsh, supra, 355 Mich at 573.

8.3b may not be applied where, as here, its application would contradict the Legislature's unambiguous intent as expressed in plain language. See e.g., Robinson v Detroit, 462 Mich 439, 461 n.18; 613 NW2d 307 (2000) (rejecting an argument to follow MCL 8.3b for two reasons: (1) MCL 8.3b is permissive, not mandatory; and (2) MCL 8.3 provides that MCL 8.3b may not be followed if doing so would be inconsistent with the manifest intent of the Legislature); Ford Motor Co v Michigan State Tax Comm, 400 Mich 499, 504, 506; 255 NW2d 608 (1977) (same); Branch Cty Bd of Comm'rs v International Union, 260 Mich App 189, 199-200; 677 NW2d 333 (2003) (same). Appellees cannot rely on MCL 8.3b to rewrite the HRCA.[11]

C. The HRCA Unambiguously Allows a Single Election to Detach Territory to More than One Township.

Appellees argue that the HRCA is ambiguous regarding whether it permits a single election and combined vote to detach territory to more than one township. (Secretary of State brief, p. 23). For example, the Secretary of State cites the phrase "district to be affected" in MCL 117.9(1), and argues:

> "The [HRCA's] definition of the 'district to be affected' as including the whole of the municipalities affected in no way mandates the conclusion that multiple-detachment questions must be allowed in a single petition and voted on in an election as a single question. Rather, the term must be read in context. The quoted language from § 9 merely recognizes that when jurisdiction over territory moves from one municipality to another, **both** municipalities are affected in their entirety. One loses a piece and the other takes it. The Legislature granted

[11]Even assuming MCL 8.3b has any applicability, it would apply to defeat Appellees' claims regarding the singular nature of certain words in the HRCA. (See e.g., Holland brief, p. 18 (stressing use of the singular word "township" in MCL 117.11); Secretary of State brief, p. 22 (same)). Appellees' failure to present a consistent analysis regarding the HRCA demonstrates that their various attempts to rewrite the HRCA lack credibility as well as merit.

> the right to vote to all qualified electors in **both** municipalities because the entirety of the municipalities are inherently affected by the alteration of boundaries. The definition of "the district to be affected' in § 9 provides that not just the residents of the land area that is subject to the detachment, but rather the residents of **both** municipalities that will be affected by the change in their common boundary line, are allowed to vote on the question of whether that change should occur. . . ." [Secretary of State brief, pp. 24-25 (emphasis added).]

Appellees argue that the phrase "district to be affected" is susceptible to an interpretation that prohibits one election on a detachment petition in multiple townships. That argument depends on Appellees' rewriting of the definition of the "district to be affected" in MCL 117.9(1) to provide that the "district to be affected" includes "the whole of **both** the city . . . or township from which territory is to be taken or to which territory is to be annexed." (See Secretary of State brief, pp. 24-25). Such rewriting of the HRCA is improper. Omelenchuk v City of Warren, 461 Mich 567, 575; 609 NW2d 177 (2000), overruled in part on other grds, 469 Mich 642, 677 NW2d 813 (2004) (proffered interpretations that rewrite statutes must be rejected). If the Legislature had intended to limit a detachment to a single city and a single township (as Appellees contend), then the Legislature would have referred to "**both** the city and the township," rather than "**each** city . . . and township." The plain meaning of "both" is "one and the other; relating to or being two in conjunction." American Heritage Dictionary (2d Coll Ed), p. 199 (1985). The Legislature repeatedly used the word "each" and never used the word "both" to describe the number of municipalities that could be involved in a single detachment petition or election under the HRCA.

The phrase "district to be affected" in MCL 117.9(1) is implicated whenever the Secretary of State receives a petition that conforms to the HRCA. Under MCL 117.11,

upon receiving a petition that conforms to the HRCA, the Secretary of State must send a "notice" to the "clerk of each city . . . or township to be affected by the carrying out of the purposes of such petition". That notice must "direct[] that . . . the question of making the . . . change of boundaries petitioned for shall be submitted to the electors of the district to be affected." MCL 117.11. MCL 117.9(1) defines the "district to be affected" as "includ[ing] the whole of each city . . . or township from which territory is to be taken or to which territory is to be annexed." In the HRCA's plain words, the detachment "question of making the . . . change of boundaries petitioned for must be submitted to the electors" of the "whole of each city . . . or township from which territory is to be taken or to which territory is to be annexed" for a vote under MCL 117.11.

The definition of "the district to be affected" that the Legislature provided in MCL 117.9(1) is unambiguous. MCL 117.9(1) plainly defines the "district to be affected" as including the "whole of each [not both] city . . . or township from which territory is to be taken or to which territory is to be annexed." Applied here, this results in the following conclusions:

1. The Casco Twp Petition proposes to take territory from the City of Richmond, and "annex" it to Casco Township and Columbus Township. Accordingly, the City of Richmond, Casco Township, and Columbus Township collectively comprise the "district to be affected" relative to the Casco Twp Petition. The "election" (singular) mandated under MCL 117.11 must take place in the City of Richmond, Casco Township, and Columbus Township.

2. The Fillmore Twp Petition proposes to take territory from the City of Holland, and "annex" it to Park Township, Laketown Township, Holland Charter Township, and

Fillmore Township. Thus, the City of Holland, Park Township, Laketown Township, Holland Charter Township, and Fillmore Township collectively comprise the "district to be affected" by the Fillmore Twp Petition. The "election" (singular) mandated under MCL 117.11 must take place in the City of Holland, Park Township, Laketown Township, Holland Charter Township, and Fillmore Township. MCL 117.11; MCL 117.9.

Appellees have failed to demonstrate any statutory ambiguity, because they have not shown (and cannot show) that the HRCA is "equally susceptible" to any meaning other than the plain meaning that Plaintiffs support. Mayor of the City of Lansing v Public Service Comm, 470 Mich 154, 165-66; 680 NW2d 840 (2004). Appellees fail to cite even a single statutory phrase in the HRCA that would suggest a prohibition of a detachment election including more than one township. This Court should reject Appellees' argument that the HRCA's detachment provisions are ambiguous, and instead conclude that those provisions are plain and unambiguous. See Williamston v Wheatfield Twp, 142 Mich App 714, 718; 370 NW2d 325 (1985) (holding: "There is no ambiguity in the detachment provisions in the home rule cities act. Read literally, its provisions are clear").

D. Appellees' Contention that the HRCA Bars a Single Election to Detach Territory to More Than One Township Defies the HRCA's Unambiguous Language.

Appellees argue that a single election may not be held on the detachment proposal in the Casco Twp Petition, or on the detachment proposal in the Fillmore Twp Petition. None of their arguments have any merit whatsoever.

1. The Petition in Each Case Involves a Single "District to Be Affected."

Appellees oppose a single election on each Petition based on their flawed premise that each petition proposes multiple and divisible detachment questions, and therefore

creates separate and distinct "districts to be affected" under MCL 117.9. (See e.g., Richmond brief, pp. 5-10).[6] As Plaintiffs discussed above (pp. 4-5), each Petition presents only a single question, and the HRCA does not permit the dissection of that question into separate hypothetical questions.

Since the Petitions each contain a single detachment question, they each create a single "district to be affected," in accordance with MCL 117.9(1), which plainly defines the "district to be affected" by a petition as "includ[ing] the whole of each city . . . or township from which territory is to be taken or to which territory is to be annexed." In light of the Legislature's definition of "district to be affected," it is apparent that: (1) for the Casco Twp Petition, the "district to be affected" includes "the whole of" the City of Richmond (territory is to be taken), Casco Township, and Columbus Township (each of which will have territory annexed); and (2) for the Fillmore Twp Petition, the "district to be affected" includes "the whole of" the City of Holland (territory is to be taken), Park Township, Laketown Township, Fillmore Township, and Holland Charter Township (each of which will have territory annexed).

Since MCL 117.11 directs that a petition that conforms to the HRCA must be put to a vote in "the district to be affected" by the petition: (1) for the Casco Twp Petition, a single election must occur in the City of Richmond, Casco Township, and Columbus Township, regarding the single detachment question in that petition, and (2) for the Fillmore Twp

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[6]For example, for the Casco Twp Petition, Appellees claim that the Petition must be presented at separate elections as follows: (1) the City of Richmond and Casco Township electors vote on Appellees' hypothetical proposal to detach territory from the City to Casco Township, and (2) the City of Richmond and Columbus Township electors vote on Appellees' second hypothetical proposal to detach territory from the City to Columbus Township.

Petition, a single election must occur in the City of Holland, Park Township, Laketown Township, Fillmore Township, and Holland Charter Township.

2. Appellees' "Equal Protection" and "Vote Dilution" Arguments Fail.

Appellees claim the citizens of the City of Richmond and City of Holland have equal protection rights that would somehow by violated by having a single election in all the municipalities within "the district to be affected."

Appellees (Winkle brief, p.15; Secretary of State brief, pp. 34-35) attempt to avoid Midland Twp v Michigan State Boundary Comm, 401 Mich 641; 259 NW2d 326 (1977), where this Court directly and pointedly addressed equal protection issues, holding that citizens of a municipality have absolutely no vested rights in their municipal boundaries. 401 Mich at 663-667. See also Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp, 237 Mich App 721, 740-741; 605 NW2d 18 (1999). Appellees assert that, while the citizens of the affected municipalities have "no vested rights in their municipal boundaries, they do have . . . equal protection guarantees that prohibit the dilution of their votes by voters in . . . non-involved, non-interested municipalities." (Winkle brief, p. 15; See also Secretary of State brief, pp. 34-35). They claim that allowing all municipalities to hold a single, district-wide election on a single detachment question "would illegally dilute the voting strength" of the City of Holland and City of Richmond, and cite for support Duncan v Coffee Cty, 69 F3d 88 (CA 6, 1995) (concerning a county resolution reapportioning a school board in response to the Tennessee Education Improvement Act) and Phillips v Andress, 634 F2d 947 (CA 5, 1981) (concerning Alabama school board election procedures).

As a preliminary matter, this Court and the federal courts have primarily inquired into

equal protection questions of "dilution of voting strength" in cases involving "racial gerrymandering." See LeRoux v Secretary of State, 465 Mich 594, 618; 640 NW2d 849 (2002). This case presents no such issue or claim, and Appellees attempt to rely on cases that had nothing to do with the HRCA.

Even assuming Appellees' "vote dilution" theory has relevance here (which it does not),[7] Appellees' discussion is overstated and misleading. The "vote dilution" theory is a challenge to State action allowing citizens to vote. Even Appellees' authority recognizes that there is a powerful presumption of enfranchisement based on the political jurisdiction that the State defines. Duncan, supra, 69 F3d at 93. Here, the Legislature defined the "district to be affected" in the HRCA to include multiple townships, so there is a strong presumption in favor of letting township electors vote. Appellees' position is contrary to the Townships' residents' fundamental right to vote,[8] as Plaintiffs explained in their initial briefs.

Further, Appellees acknowledge that they challenge State action that only needs to satisfy a rational basis test. (Winkle brief, p. 13; Secretary of State brief, p. 35, n.100). A decision to include "out-of-district" voters (assuming there are any) in an election is not irrational if those voters have a substantial interest in the election. Duncan, supra, 69 F3d

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[7]The Appellees' "vote dilution" theory has relevance only in a case involving different voting jurisdictions and a matter concerning one jurisdiction – for example, Grand Rapids and Detroit voters both voting to elect members of the Detroit City Council. There is no "vote dilution" issue, however, with Grand Rapids and Detroit voters both voting on a statewide election or ballot proposal. In other words, since the Legislature defined the "district to be affected" in the HRCA to include multiple townships, there are no "out-of-district" voters and no "vote dilution" issues in the present case.

[8]"In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." Dunn v Blumstein, 405 US 330, 336; 92 S Ct 995; 31 L Ed 2d 274 (1972).

at 94. The Duncan Court held that the defendant county properly let city electors participate in an election for the board of a rural county school district, even though the city had its own separate school district, because the city residents had a substantial interest in the operation of the county school system. 69 F 3d at 94-98. Similarly, here, the electors of each of the affected municipalities have a substantial interest in the single detachment proposal presented by each Petition. By Legislative definition, under MCL 117.9(1), each of the municipalities within the "district to be affected" will either lose territory or gain territory through the detachment. Therefore, Appellees' characterization of some of the Townships as "non-involved, non-interested parties" is both legally and factually incorrect. Since all of the municipalities are "affected," there must be a single election in all of the "affected municipalities." Appellees "dilution of voting strength" argument is mere sophistry designed to disenfranchise Township voters.

The Legislature set forth the relevant legal interests and voting rights in the HRCA, and this Court's controlling authority demonstrates that Appellees have no right to the other alternative(s) that they propose. There is no merit in Appellees' attempt to have this Court substitute their policy proposal(s) for the Legislature's decision. Hanson v Mecosta Co Road Comm'rs, 465 Mich 492, 504; 638 NW2d 326 (2002) (court's function "is not to redetermine the Legislature's choice or to independently assess what would be most fair or just or best public policy"); Halloran v Bhan, 470 Mich 572, 579; 683 NW2d 129 (2004) ("the argument that enforcing the Legislature's plain language will lead to unwise policy implications is for the Legislature to review and decide, not this Court").

3. A Single Election Is Consistent with Laws Regarding Ballot Questions.

According to Appellees, even if the Petitions are deemed to present a "single"

detachment question, this Court should not permit a single election on that "single" detachment question because doing so would be inconsistent with the principle that ballot questions not involve separate subjects. They rely on Muskegon Public Schools v VanderLaan, 211 Mich 85; 178 NW 424 (1920), which actually supports Plaintiffs' position because this Court upheld a single, district-wide vote on a multiple-issue ballot question. 211 Mich at 85-86. This Court expressly rejected the argument (made by Appellees here) that separate questions should have been presented. 211 Mich at 87-89.

E. Case Law Supports the Use of a Single Petition and Election to Detach Territory to More Than One Township.

Appellees contend that no case law supports holding a single election on a single detachment question involving more than one township (Secretary of State brief, pp. 27-33; Richmond brief, pp. 11-14, 16-18; Holland brief, pp. 26-27; MML brief, p. 7). They maintain that Cook and Walsh support their proposal for separate elections, each involving only one township. Appellees misconstrue Cook and Walsh.

Appellees assert that, despite amendments to the HRCA procedures for counting votes, the method of vote counting used in Cook and Walsh is required here. While there was separate vote counting in Cook and Walsh, the method of vote counting in those cases was mandated by former (now-repealed) statutory language in the HRCA. At the time of Cook, the HRCA required that the votes in the territory proposed to be annexed or detached had to be counted separately from the combined votes in the remaining portions of the city and township:

> "The district to be affected by every such proposed . . . change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed: Provided, That proposed consolidation or changes of boundaries shall be submitted to

> the qualified electors of the city, and to the qualified electors of the city, village or township from which the territory to be taken is located, and at the election when said question is voted upon, the city, village or township shall conduct the election in such manner as to keep the votes of the qualified electors in the territory proposed to be annexed or detached in a separate box from the one containing the votes from the remaining portions of such city, village or township, and if the returns of said election shall show a majority of the votes cast in the district proposed to be annexed, voting separately, to be in favor of the proposed change of boundary, and if a majority of the electors voting in the remainder of the district proposed to be affected as herein defined, voting collectively, are in favor of the proposed change of boundary, then such territory shall become a part of the corporate territory of the city or shall be detached therefrom, as the case may be." [Comp. Laws 1915, § 3312 (identical to 279 PA 1909, § 9].

At the time of Walsh, the HRCA contained a similar separate vote counting requirement:

> "The district to be affected by every such proposed . . . change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed: . . . Any proposed consolidation or change of boundaries shall be submitted to the qualified electors of the city, and to the qualified electors of the city, village, or township from which the territory is to be taken is located, and at the election when said question is voted upon, the city, village or township shall conduct the election in such a manner as to keep the votes of the qualified electors in the territory proposed to be annexed or detached in a separate box from the one containing the votes from the remaining portions of such city, village or township: Provided, however, that territory may be attached or detached to or from cities having a population of 15,000 or less if a majority of the electors voting on the question in the city to or from which territory is to be attached or detached, and a majority of the electors from that portion of the territory to be attached or detached, as the case may be, both vote in favor of such proposition. If the returns of said election shall show a majority of the votes cast in the district to be annexed, voting separately, to be in favor of the proposed change of boundary, and if a majority of the electors voting in the remainder of the district to be affected as herein defined, voting collectively, are

> in favor of the proposed change of boundary, then such territory shall become a part of the corporate territory of the city or shall be detached therefrom, as the case may be." [Comp. Laws 1956, MCL 117.9.]

See also Cook, supra (construing 1909 PA 279); Walsh, supra (construing MCL 117.9, as it existed in Comp. Laws 1956).

After this Court decided Cook and Walsh, the Legislature deleted the separate vote counting requirements from the HRCA. See MCL 117.9; Williamston, supra, 142 Mich App at 718 (noting that that 1970 amendment to the HRCA removed separate vote counting provisions in Comp. Laws 1956). There is no support in the HRCA today for Appellees' suggestion to separately count votes in different areas within the "district to be affected."

As Plaintiffs demonstrated above (pp. 4-5), Appellees' suggestion that Cook and Walsh support separating or dissecting the single detachment question in each of the Petitions is also erroneous. In both Cook and Walsh, this Court recognized that each proposed boundary change was a single, "indivisible," "package" proposal. See e.g., Walsh, supra, 355 Mich at 573. Also, in those cases, the same single, "indivisible," "package" proposal was submitted to the electors of all the municipalities within the "district to be affected." Appellees' proposal that electors vote on separate and distinct detachment questions has absolutely no support in Cook or Walsh (nor the HRCA).

A proper review of Cook and Walsh (in the light of the former HRCA language applied there), coupled with the plain language in the HRCA today, shows that those decisions support Plaintiffs' position that a single, "indivisible," "package" detachment proposal (as in the Petitions) may be submitted to the electors in the "district to be affected." MCL 117.6; MCL 117.9; MCL 117.11 (requiring that the detachment question

petitioned for be submitted to the entire "district to be affected'").[9]

F. Appellees' Remaining Arguments Fail.

Appellees assert various other arguments in their attempt to dissuade this Court from following the HRCA's plain language. The errors in those arguments are illustrated below.

1. Appellees' Allegations of Purported "Motives" Lack Relevance.

Appellees contend that Plaintiffs submitted the Petitions in hopes of combining votes in townships to accomplish the detachments. (Richmond brief, p. 37). Appellees' argument is irrelevant because "motives" of petitioners in municipal boundary matters are irrelevant. See e.g., Midland Twp, supra, 401 Mich at 679. Appellees cite no authority to support their attempt to invalidate a detachment petition due to alleged "motives." It does not matter why Plaintiffs chose to do what the Legislature plainly allowed them to do under the HRCA. Appellees essentially ask this Court to rule according to Appellees' own "motives" to prevent voting, despite the Legislature's contrary and controlling requirements.

2. Appellees' Reliance on the "Absurd Result" Maxim is Erroneous.

Appellees' statutory interpretation argument relies on the "absurd result" maxim (See Winkle brief, p. 12), contrary to this Court's clear and repeated statutory interpretation principles. See People v McIntire, 461 Mich 147, 155 n.8; 599 NW2d 102 (1999); Piccalo

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[9]Appellees cite two out-of-state cases, Lake Wales v Florida Citrus, 191 So 2d 453, 457 (Fla, 1966), and People v San Jose, 222 P 2d 947 (Cal, 1950), for their position that the HRCA does not allow a single election on the detachment proposed in the Petitions. (See e.g., Richmond brief, pp. 14-15). Appellees' reliance is misplaced. In Lake Wales, the Court held that a statute was unconstitutional because it did not meet the Florida Constitution's requirement regarding publication of an ordinance's effective date. In San Jose, the Court held that electors were entitled to vote separately, based on express statutory language requiring separate submissions. Lake Wales and San Jose are therefore inapposite here.

v Nix, 466 Mich 861; 643 NW2d 233 (2002) (where Court of Appeals decided a statute was inapplicable because it would produce an absurd result, this Court vacated that decision and remanded for reconsideration in light of McIntire); see also McGhee v Helsel, 262 Mich App 221, 226; 686 NW2d 6 (2004) (Zahra, J.) (noting that this Court has "criticized and substantially limited, if not eviscerated, the 'absurd result' rule"). There is no sound basis to even consider Appellees' assertion of an "absurd result" where, as here, the HRCA's language is unambiguous. Williamston, supra, 142 Mich App at 719.

3. The Secretary of State's Flawed Decision Warrants No Deference.

Appellees contend that the Secretary of State's interpretation of the HRCA is entitled to deference. Deference is unwarranted because the Secretary of State's interpretation defies the HRCA's plain language. Consumers Power Co v Public Service Comm, 460 Mich 148, 157 n.8; 596 NW2d 126 (1999) (rejecting a similar "deference" argument, because "[a]n agency interpretation cannot overcome the plain meaning of a statute").

Moreover, these cases concern the Secretary of State's first announcement of a new viewpoint on the HRCA (based on an Assistant Attorney General's informal advice, Casco Twp Appendix 37a), not a long-standing interpretation of that statute. Grand Rapids Educ Ass'n v Grand Rapids Bd of Educ, 170 Mich App 644, 651; 428 NW2d 731 (1988) (administrative interpretations that are not long-standing are not given great deference).[10]

[10]Further, as MCL 117.11 demonstrates, the Secretary of State's role under the HRCA is purely ministerial and does not include the authority to make "interpretations," particularly when they conflict with the HRCA's plain language.

4. The Petitions Would Not Create Any Enclaves.

Appellees argue that the Casco Twp Petition is invalid because it would create an enclave, if the electors approve the Casco Township detachment, but reject the Columbus Township detachment. (Richmond brief, pp. 37-39). Appellees' argument is based on the flawed premise that the Casco Twp Petition consists of two separate detachment questions that must be submitted in two separate "districts to be affected." This argument fails, as contrary to the actual Petition and the HRCA's plain language, as explained above.

5. The Petitions Are Not Invalid on "Contiguity" Grounds.

Appellees also claim that the Fillmore Twp Petition is invalid due to an alleged lack of "contiguity." (Holland brief, p. 31). This argument is baseless and illogical, because each portion of the proposed detachment area is contiguous with the City's exterior boundaries, and therefore also contiguous to the surrounding townships. Any territory that is not within a city must be within a township, whether it underlies a lake, a river, a highway, or other feature.

Appellees' "contiguity " argument also fails because in Charter Twp of Bloomfield v Oakland County Clerk, 253 Mich App 1; 654 NW2d 610 (2002), the Court of Appeals rejected a challenge to an annexation based on a purported contiguity issue. As in this case, the asserted basis for the contiguity argument in Charter Twp of Bloomfield was Owosso Twp v City of Owosso, 385 Mich 587; 189 NW2d 421 (1971) (Holland brief, p. 31). The Court rejected that argument, reasoning that the contiguity argument "ignores . . . that in affirming this Court's decision in Owosso Twp, the Supreme Court explicitly recognized that 'the judicial requirement of 'contiguity' in municipal annexation' applied by this Court had been superseded by the Legislature's enactment of MCL 117.9." 253 Mich

App at 34 n.13 (citation omitted). The Court then found no reason to conclude that the Legislature intended to resurrect the contiguity concept. See id. (expressly rejecting reliance on Pittsfield Twp v Ann Arbor, 86 Mich App 229, 233; 274 NW2d 466 (1978), involving MCL 117.9 and applying the factors "traditionally" applied by Michigan courts in annexation actions, including contiguity).

Holland's reliance on Town of Delavan v City of Delavan, 500 NW2d 268 (Wis, 1993) is misplaced because it supports Plaintiffs' position. Delavan held that the defendant city's annexation of an area was valid where, due to a lake being artificially and temporarily dry, it included a peninsula at the opposite side of the lake. See 500 NW2d at 273 (noting that a "hypertechnical application of the requirement for contiguity would be contrary to the public interest").

Authority from other jurisdictions addressing the issue also holds that the existence of an intervening water body does not destroy municipal contiguity. See e.g., Vestal v Little Rock, 15 SW 891, 892 (Ark, 1891) (that the annexing city was on one side of a river and a part of the lands to be annexed was on the other side of the river did not demonstrate that the lands were not contiguous); Redford v City of Burley, 388 P2d 996, 998-999 (Idaho, 1964); Beaufort Cty v Trask, 563 SE2d 660, 661-662 (SC App, 2002) (city was contiguous with annexed property, notwithstanding a state-owned river between the city limits and the annexed property; water did not destroy contiguity). Following these decisions, this Court should reject Holland's argument that a body of water destroys any contiguity between the proposed detachment area and the surrounding townships.

II. PLAINTIFFS ARE ENTITLED TO THE REQUESTED WRIT OF MANDAMUS.

Appellees challenge whether Plaintiffs have met the various requirements for obtaining mandamus. Baraga Cty v State Tax Comm, 466 Mich 264, 266; 645 NW2d 13 (2002); Toan v McGinn, 271 Mich 28, 24; 260 NW 108 (1965). These arguments are erroneous.

A. Plaintiffs Have a Clear Legal Right to the Relief Sought, and the Secretary of State Has a Clear Legal Duty to Perform the Acts Requested.

Appellees argue that Plaintiffs have no clear legal right to have their Petitions certified as conforming to the HRCA, and cite for support a letter that the Director of Elections wrote, asserting that the issue of the Petitions' validity was unclear. (Secretary of State brief, p. 38). Appellees are wrong. The clarity of the statute is not altered by the Director of Elections' erroneous opinion. Manistique Area Schools v State Bd of Educ, 18 Mich App 519, 522; 171 NW2d 568 (1969) ("Defendant cannot escape the mandamus action by saying its interpretation of the statute makes the statute ambiguous and hence mandamus will not lie;" mandamus granted based on the plain language of the statute).

As explained in Plaintiffs' Briefs on Appeal and above, the HRCA is unambiguous, and the Petitions and accompanying Affidavits conform to all applicable requirements in the HRCA. Plaintiffs therefore have a clear legal right under the plain language of the HRCA to have the Secretary of State (a) certify the Petitions as conforming with the HRCA, and (b) direct that a single election be held on the detachment question in the affected municipalities. See Williamston, supra, 142 Mich App at 717-18; Walsh, supra, 355 Mich at 573.

B. The Acts Requested of the Secretary of State Are Ministerial.

According to Appellees, the acts Plaintiffs requested of the Secretary of State were not ministerial, since they claim that the Secretary of State was called upon to exercise some "discretion," and interpret a statute. Appellees ignore that this Court has held that mandamus is the proper remedy for a party to compel the submission of boundary change proposals to the electorate where petitions had been properly filed under the HRCA. Attwood v Wayne Cty Supervisors; 349 Mich 415, 421; 84 NW2d 708 (1957); Goethal v Kent Cty Supervisors; 361 Mich 104, 110, 115-117; 104 NW2d 794 (1960).

C. Plaintiffs Have No Other Adequate Alternative Remedy.

Appellees also argue that Plaintiffs are not entitled to mandamus because Plaintiffs have another "option" - circulate separate petitions in each township. (Secretary of State brief, pp. 42-43). This argument mischaracterizes the requirement of showing the lack of an adequate alternative remedy. For purposes of mandamus, one lacks an adequate, alternative remedy "when, in practical terms, no legal or equitable remedy would achieve the same result" as sought in the mandamus request. Baraga County v State Tax Comm, 243 Mich App 452, 459; 622 NW2d 109 (2000), rev'd on other grds, 466 Mich 264 (2002) (citing Delly v Bureau of State Lottery, 183 Mich App 258, 260; 454 NW2d 141 (1990)); Johnston v Mid-Michigan Telephone Co, 95 Mich App 364, 368-369; 290 NW2d 146 (1980).

Plaintiffs request mandamus relief ordering the Secretary of State to certify the Petitions and, as to each of the Petitions, set an election on the single detachment question therein. The "option" Appellees propose would not produce this result, since Appellees' "option" would result in the submission of different detachment proposals to

different municipalities. Since the HRCA provides no other alternative to have the Petitions certified and obtain a single election as they seek here, Plaintiffs have no other adequate remedy. Detroit City Council v Stecher, 153 Mich App 601, 608; 396 NW2d 444 (1986), rev'd on other grds 430 Mich 74 (1988).

CONCLUSION AND RELIEF REQUESTED

For the reasons stated above and in their respective Briefs on Appeal, Plaintiffs respectfully request that this Court reverse the lower courts and direct that writs of mandamus issue as requested by Plaintiffs.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for Plaintiffs/Appellants

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By: William K Fahey

William K. Fahey (P27745)
Stephen J. Rhodes (P40112)
Eric E. Doster (P41782)
Ronald D. Richards Jr. (P61007)
313 S. Washington Square
Lansing, MI 48933
(517) 371-8150

James V. Dubay (P12977)
Co-counsel for Plaintiffs/Appellants
in Case No. 126120
68650 S. Main Street
Richmond, MI 48062
(586) 727-2455

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